

EXHIBIT D

Vito, Robert - Vol. II
Philadelphia, PA

June 20, 2007

Page 289

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

VOLUME II

IN RE: PHARMACEUTICAL : MDL NO. 1456
INDUSTRY AVERAGE WHOLESALE : CIVIL ACTION:
PRICE LITIGATION : 01-CV-12257-PBS
:
THIS DOCUMENT RELATES TO :
U.S. ex rel. Ven-A-Care of :
the Florida Keys, Inc. v. :
Abbott Laboratories, Inc. :
No. 06-CV-11337-PBS :
- - -

Continuation of the videotaped
deposition of ROBERT VITO was taken, pursuant
to notice, at MORGAN LEWIS & BOCKIUS, LLP,
1701 Market Street, Philadelphia,
Pennsylvania, on Wednesday, June 20, 2007,
beginning at 8:43 a.m., before M. Kathleen
Muino, Professional Shorthand Reporter, Notary
Public; Michael Hunterton, Certified Legal
Video Specialist, there being present:

Henderson Legal Services
202-220-4158

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Page 610	Page 612
1 MR. TORBORG: I'm just about done.	1 inadequate payment for services?
2 THE VIDEOGRAPHER: -- get an operator on	2 MR. NEAL: You can answer that consistent
3 the phone?	3 with my previous instruction on privileged
4 MR. McDONALD: Well, yeah, but, David,	4 communications with HCFA officials.
5 it's going to terrible. Why don't you just mute it	5 THE WITNESS: I think it --
6 or something? It's going to be worthless to have	6 MR. AZORSKY: Objection to form.
7 the video and not -- I mean, I can hear the	7 THE WITNESS: I think it was -- in our
8 feedback back here. Just mute the conference call.	8 later reports, we mention that in the conclusion or
9 ---	9 the recommendation, so I think there was -- that
10 (Whereupon, the telephone was muted.)	10 was definitely, I believe, in a public document
11 ---	11 from the OIG.
12 BY MR. TORBORG:	12 BY MR. TORBORG:
13 Q. And do you recall who it was that made	13 Q. With -- without revealing to me the
14 the comment at the hearing?	14 substance of the communications, was that a -- a
15 A. I don't recall, but I do believe that	15 topic that was discussed at the exit conferences
16 that was mentioned at -- at the -- at the hearing.	16 that you had with HCFA?
17 It might have been GAO or it might have been -- I	17 MR. NEAL: You can answer that question
18 don't know exactly who it was, but there is a	18 yes or no.
19 record of the hearing. I believe it was in -- in	19 THE WITNESS: Hmph.
20 2001, either September or October.	20 MR. NEAL: Or I -- or I don't remember.
21 Q. Was that concept ever discussed at the	21 MR. AZORSKY: Objection to form.
22 state pharmacy association meetings that you	22 THE WITNESS: I don't remember.
Page 611	Page 613
1 attended?	1 MR. TORBORG: Why don't we break for the
2 A. The -- the -- again, you're talking	2 day.
3 about the Medicare context of -- and then the other	3 MR. NEAL: That's fine.
4 -- the state representatives are the Medicaid. So	4 MR. TORBORG: Thank you very much, Mr.
5 I believe that the Medicaid, we mainly talked about	5 Vito, for your time.
6 the AWP issues. We did not -- in our reports, we	6 THE VIDEOGRAPHER: The time is 4:34 p.m.
7 did not talk about the Medicare issues with them	7 We're going off the record, concluding this day's
8 unless it had to do with J codes, in which they	8 testimony, consisting of six tapes in the
9 were being billed to the Medicaid program.	9 deposition of Robert Vito, in the matter of In Re:
10 Q. Do you recall discussions at the state	10 Pharmaceutical Average Wholesale Price Litigation.
11 pharmaceutical meetings that you attended that the	11 This -- this day of testimony consists of six tapes
12 payment for ingredient costs would subsi --	12 and will be held by Henderson Legal Services of
13 subsidize an insufficient dispensing fee?	13 Washington, DC.
14 MR. NEAL: Objection as to form.	14 ---
15 THE WITNESS: I -- I think there has	15 (Whereupon, the deposition adjourned at
16 always been questions about the dispensing fee and	16 4:35 p.m.)
17 if it's proper or not, so there probably was some	17 ---
18 discussions about that.	18
19 BY MR. TORBORG:	19
20 Q. And do you recall any conversations with	20
21 HCFA relating to the Medicare side about whether or	21
22 not the payment for ingredient cost would subsidize	22

82 (Pages 610 to 613)

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